

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

CA,F&CS Department-APSCSC Limited Sri.Someswaram, S/o.Late A.Suryaprakasam, working as LPG Mechanic on daily wages in the A.P. State Civil Supplies Corporation Ltd, Seethammadhara, Visakhapatnam regularization of services in terms of G.O.Ms.No.212, Finance & Planning (FW.PC.III) Dept, dated 22/04/1994- Orders – Issued.

CONSUMER AFFAIRS, FOOD AND CIVIL SUPPLIES (CS.I) DEPARTMENT

G.O.RT.No. 7

Dated: 20-02-2016

Read the following :

- (1) W.P.No.21567/99, of APHC, dated 29/09/2008
- (2) G.O.Rt.No.89, CA, F&CS (CS.I) Dept, dated 2/10/2009.
- (3) W.P.No.25591 of 2010 of High Court of Andhra Pradesh dt.21/11/2013
- (4) From the Vice Chairman&Managing Director,APSCSC Ltd, Lr. No. P. Admn. A1/001558/2009, 04/2014.

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ORDER :

The Vice Chairman and Managing Director, A.P. State Civil Supplies Corporation Limited, AP, Hyderabad, has submitted proposals vide reference fourth read above for regularization of the services of Sri A.Someswaram, S/o.Late A.Suryaprakasam, working as LPG Mechanic on daily wages in the A.P. State Civil Supplies Corporation Ltd, Seethammadhara, Visakhapatnam in light of Hon'ble High Court of Andhra Pradesh order dated. 21-11-2013 in W.P.No.25591 of 2010 for considering the inclusion of the artificial gaps in the mandatory service of 5 years which is a pre-requisite qualification for regularization under G.O.MS.NO.212/1994.

2. The Vice Chairman and Managing Director, A.P.S.C.SC. Limited, while forwarding the proposal has furnished the details of the case as follows :

- i) Consequent of announcement of Government Policy in G.O.Ms.No.212, Finance & Planning (FW.PC.III) Dept, dated 22/04/1994 issued orders and guidelines for regularizing the services of daily wage employees who worked continuously for a minimum period of 5 years and are continuing in service as on 25/11/1993. proposals were sent to Government for regularizing the services of Daily Wage employees working in the Corporation. Government issued orders in G.O.Ms.No.466, F&CS (III) Dept; dated 07/11/1995 regularizing the services of persons who have fulfilled the conditions laid down in G.O.Ms.No.212, Finance & Planning (FW.PC.III) Dept, dated 22/04/1994. The services of Sri A.Someswaram have not been regularized by the Government, as the individual did not fulfill the condition of 5 years of service as on 25/11/1993. Subsequently, proposals have been sent to Government for regularization of services of the left over persons as they are working against the sanctioned posts.
- ii) In the meanwhile, Sri A.Someswaram, LPG Mechanic has filed W.P.No.9555 of 1997 in the Hon'ble High Court praying for regularization of his services from the date of appointment i.e., 25/11/1988. The Hon'ble High Court in its order dated 04/02/1999 directed the Government to take an appropriate decision in

the matter in accordance with law within three months from the date of receipt of the order. Accordingly, after examining the matter, Government have informed that the proposal for regularization of the services of Sri A.Someswaram, LPG Mechanic who was appointed on daily wage basis w.e.f. 26/04/1990 cannot be considered as he has not completed required service of 5 years service as on 25.11.1993, the same has been informed to the petitioner i.e., Sri A.Someswaram, LPG Mechanic Visakhapatnam, vide Endt.No.P.Admn.9 (7)/1990, dated 31/07/1999.

- iii) Again, he was filed another W.P.No.21567/99 in the Hon'ble High Court praying for regularization of his services w.e.f. 25/11/1988. Corporation filed Counter stating that the petitioner was engaged as LPG Mechanic on a daily wages at LPG Centre, Palvoucha on 25/11/1988 to 24/10/1989. He was terminated from service on 25/10/1989. On his representation on 03/04/1990 and after assessing the requirement he was appointed as LPG Mechanic at LPG Centre, Palvoucha and he reported to duty on 26/04/1990. Hence, the contention of the petitioner that he is in continuous service of the Corporation from 25/11/1988 is not true, as the petitioner was not in service of the Corporation for about 6 months from 25/10/1989 to 25/04/1990 and thus he has not completed 5 years of continuous service as on 25/11/1993 as he has been in continuous service of the Corporation only from 26/04/1990 and does not fulfill the stipulated condition laid down in G.O.Ms.No.212, Finance & Planning (FW.PC.III) Dept, dated 22/04/1994.
- iv) The Hon'ble High Court while disposing the W.P.No.21567/99, dated 29/09/2008 directed the Corporation i.e.. 1st Respondent to consider the representation of the petitioner dated 17/12/1995 and send the proposals with all the necessary service particulars of the petitioner to the Government i.e., 2nd Respondent within a period of two months from the date of receipt of a copy of the order and the 2nd respondent shall consider the same and pass appropriate orders within a period of two months thereafter. Accordingly, proposals were sent to Government in CA,F&CS Dept, Secretariat with a request to examine the matter in terms of directions of Hon'ble High Court issued on 29/09/2008 in W.P.No.21567/1999.
- v) The Government vide G.O.Rt.No.89, dated 12/10/2009 have rejected the regularization of services of Sri A. Someswaram, LPG Mechanic who was appointed on daily wages with effect from the date of his appointment i.e., 26/04/1990, since he has not completed the required service of five years as on 25/11/1993, which is a statutory obligation as per Act 27/98 and directed the VC&MD, APSCSC Ltd to take necessary action accordingly.
- vi) Again, the individual filed a W.P.No.25591 of 2010 against G.O.Rt.No.89, CA, F&CS (CS.I) Dept, dated 12/10/2009. The Hon'ble High Court in its order dt.21/11/2013 in the WP.NO.25591/2010 while disposing the WP has made the following observations
 - ♦ *The observations of the learned single Judge in Order dated 29.09.2008 in W.P.No. 21567/1999 could be extracted with profit. While disposing of the said writ petition, the learned Single Judge has observed thus:*

- ◆ *"7. The case of the petitioner is that he was appointed as Mechanic at L.P.G.Center, Paloncha of the respondent-Corporation on 25.11.1988 and since then he has been continuing with artificial breaks every after 89 days. His further case is that he was transferred to different places and he reported to duty accordingly. He also filed copies of the transfer proceedings. The petitioner also filed a copy of the appointment order dated 25.11.1988 issued by the Manager/Accountant of the respondent-Corporation in this regard. To prove that he has been disengaged every after 89 days , he filed one of the proceedings issued by the Corporation dated 10.10.1996. The respondents in the counter have not contraverted this fact. Further, in the counter filed by the respondents it is stated that the petitioner was appointed on 25.11.1988 and that he was ousted from service with effect from 25.10.1989 and that he was not in service for a period of six months from 25.10.1989 to 25.04.1990. But the counter does not speak under what circumstances, the services of the petitioner, were disengaged and why he was again reengaged and continued thereafter. The petitioner also filed representation on 17.12.1995 indicating that he was appointed on 25.11.1988 and has completed five years of service at L.P.G Centre, Kothagudem and, therefore, sought for regularization in terms of G.O.Ms.No.212. From the counter, no reasons are forthcoming why his services were ousted with effect from 25.10.1989. The work undertaking by the L.P.G.Mechanic in the respondent-Corporation, appears to be perennial in nature, since the petitioner was being re-engaged every after 89 days by giving two days break. It is well settled that creating artificial breaks is not permissible under law. Further, the impugned orders does not appear to have been issued, by considering the representation of the petitioner dated 17.12.1995, wherein the petitioner has categorically stated that he was initially appointed on 25.11.1988. The counter also does not controvert the filing of the representation, dated 25.11.1995. Therefore, any order that is passed by the authorities without considering the material available on record, is improper and is liable to be set aside.*
- ◆ *8. Further, the other factor, which is asserted, is that, similarly situated employee, who was continued with artificial breaks filed W.P.No.26869/1995 and this Court directed the Government to consider his case as per G.O.Ms.No.212 and the respondent-Corporation by condoning the artificial breaks, regularized his services. The counsel for the petitioner also produced a copy of the order in W.P.No.26869/1995."*

In the light of the above observations of the learned Single Judge, the order of rejection in G.O.Rt.No.89, dated 12.10.2009 was passed. The 1st respondent, having considered the proposal sent by the 2nd respondent on 20.04.2009, observed, rejecting the case of the petitioner, in the following manner:

"4. The Vice Chairman & Managing Director has also stated that the petitioner has filed another WP No.21567/99 in the Hon'ble High Court praying for regularization of his services with effect from 25.11.1988.

Corporation filed counter stating that the petitioner was engaged as LPG Mechanic on a daily wages at LPG Centre, Palvoncha on 25.11.1988 to 24.10.1989. He was terminated from service Mechanic afresh at LPG Centre, Palvoncha and he reported to duty on 26.04.1990. Hence the contention of the petitioner that he is in continuous service of the Corporation from 25.11.1988 is not true, as the petitioner was not in service of the Corporation for about 6 months from 25.10.1989 to 25.04.1990 and thus he has not completed 5 years of continuous service as on 25.11.1993 as he has been in continuous service of the Corporation only from 26.04.1990 and does not fulfill the stipulated condition in G.O.Ms.No.212, Finance & Plg. (Fin.Wing:PC.III) Dept., dt:22.04.1994.

7. In pursuance of the directions of Hon'ble APHC order dated 29.09.2008 in W.P.No.21567 of 1999, Government have examined the proposal for regularization of services of Sri A.Someswaram, LPG Mechanic, who was appointed on daily wage basis with effect from the date of his appointment i.e., 26.04.1990. He has not completed the required service of 5 years as on 25.11.1993, which is a statutory obligation as per Act 27/98. In view of the said reasons, the case of Sri A.Someswaram, LPG Mechanic on daily wages considered and rejected as per the Act.2/94 of 27/98."

3. The learned Single Judge in W.P.No.21567/1999 has observed that the counter of the respondents filed in the said writ petition does not speak under what circumstances the services of the petitioner were disengaged and why he was again reengaged and continued thereafter. The learned Single Judge has further observed that creating artificial breaks in the service of any casual labour is not permissible under law. What thus remains uncontroverted to this day is that employees who were similarly situated having not completed 5 years of service due to artificial breaks approached this Court earlier and, based on the directions of this Court, their services were regularized. In any event, the observations made in order dated 29.09.2008 in W.P.No.21567/1999 in paragraphs-7 & 8 therein, have not been contraverted and on the other hand, they have attained finality as well. It can safely be concluded that the petitioner is deemed to have completed 5 years of service in terms of G.O.Ms.No. 212, dated 22.04.1994, in as much as the petitioner cannot be made to suffer on account of artificial breaks imposed on him, given his weak bargaining power as a casual laborer against the might of his employer, which is an autonomous Government organization.

4. The Hon'ble High Court in its order dt.21/11/201 in W.P.No.25591 of 2010 has further observed Without adding further, given many rounds of litigation, based on the definitive observations made earlier by this Court, it meets the ends of justice, if a direction, hopefully final, is given to regularize the services of the petitioner by treating his service without artificial breaks as having completed 5 years, of course, subject to meeting the other criteria laid down in G.O.Ms.No.212, dated 22.04.1994 and pass appropriate orders in this regard as expeditiously as possible, but not later than 3 (three) months, from the date of receipt of a copy of this order. In the wake of the present direction, the order in G.O.Rt.No.89, dated 12.10.2009 stands set aside.

5. The reasons to set aside the G.O.RT.NO.89, CAF&CS Department, dt.12-10-2009 by the High Court of A.P. while passing the judgment in WP.NO. 25591/2010 is the Hon'ble Judge has taken the extract of his judgment in WP.NO.21567/99 at para.7 and 8 quoted above, the APHC categorically stated that *the counter does not speak under what circumstances, the services of the petitioner, were disengaged and why he was again reengaged and continued*

thereafter. Further the petitioner was being re-engaged every after 89 days by giving two days break. It is well settled that creating artificial breaks is not permissible under law. Further, the impugned orders does not appear to have been issued, by considering the representation of the petitioner dated 17.12.1995, wherein the petitioner has categorically stated that he was initially appointed on 25.11.1988. The counter also does not controvert the filing of the representation, dated 25.11.1995. Therefore, any order that is passed by the authorities without considering the material available on record, is improper and is liable to be set aside.

6. The petitioner 's case was examined in light of the judgment of the A.P. High Court in WP.NO.25591/2010 and the observations made in the order dated.29-09-2008 in WP.NO.21567/1999 and considered to include artificial breaks in 5 years services for counting the minimum of 5 years. Accordingly the individual has completed five years service by 25-11- 1993.

7. After careful consideration of the entire issue, Government hereby regularize the services of Sri A.Someswaram, S/o.Late A.Suryaprakasam, working as LPG Mechanic on daily wages in the A.P. State Civil Supplies Corporation Ltd, Seethammadhara, Visakhapatnam regularization of services in terms of G.O.Ms.No.212, Finance & Planning (FW.PC.I I I) Dept, dated 22/04/1994. The above said orders will come into force from the date of issue of the G.O.

8. The Vice Chairman and Managing Director, APSCSC Ltd., A.P. Hyderabad, is requested to take necessary action for regularizing the services of Sri A.Someswaram, S/o.Late A.Suryaprakasam, working as LPG Mechanic on daily wages in the A.P. State Civil Supplies Corporation Ltd, Seethammadhara, Visakhapatnam in terms of G.O.MS.NO.212/1994. I t is also informed that in future if any incidences noticed by the Government about the facts furnished by the Corporation / Employee are found wrong, the Government is having powers to cancel the orders issued for regularization of the individual.

9. This order issues with the concurrence of Finance (HRM.III) Department vide their U.O.No,2881-B/22/A2/HRM.III/2015, dated.08-04-2015.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

G. JAYALAKSHMI
EX-OFFICIO SECRETARY TO GOVERNMENT

To

The Vice – Chairman, AP State Civil Supplies Corporation Ltd, A.P. Hyderabad.
Sri.A.Someswaram, S/o.Late A.Suryaprakasam,LPG Mechanic A.P. State Civil Supplies Corporation Ltd, Seethammadhara, Visakhapatnam (through the VC&MD., APSCSC Ltd., Hyderabad)

Copy to :

Finance (HRM.III) Department for information.

Sf/sc

// FORWARDED BY ORDER //

SECTION OFFICER